

1           ALTEMUS & WAGNER

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5           Stewart C. Altemus (State Bar #98746)

6           Attorney for Plaintiff LONNELL SMITH

7                           UNITED STATES DISTRICT COURT

8                           NORTHERN DISTRICT OF CALIFORNIA

9           LONNELL SMITH,

10                           Plaintiff,

Case No. 3:09-cv-01057-PJH

11                           vs.

**STIPULATION AND ~~PROPOSED~~  
ORDER TO DISMISS THE  
COMPLAINT AND TOLL THE  
STATUTE OF LIMITATIONS**

12           DATEX-OHMEDA, INC., et al

13                           Defendants.

14 \_\_\_\_\_ /  
15  
16  
17           Plaintiff, LONNELL SMITH, ("Plaintiff") and Defendants, DATEX-OHMEDA, INC.  
18 ("Datex-Ohmeda") (erroneously sued as GE Healthcare, Inc.) and ABBOTT LABORATORIES  
19 ("Abbott") by and through their respective counsel of record, hereby stipulate:

20           1. Dismissal of the Complaint against Datex-Ohmeda, Inc. and Abbott without prejudice.

21           Plaintiff will file a formal dismissal without prejudice of her pending Complaint against  
22 Datex-Ohmeda and Abbott within twenty (20) days following entry of the Court's order  
23 implementing this stipulation.

24           2. Agreement for Future Re-service of the Complaint.

25           If Plaintiff subsequently elects to pursue her Complaint against Datex-Ohmeda and/or Abbott  
26 she must do so within sixty (60) calendar days following a settlement of, or final judgment in,  
27 *Lonnell Smith v. St. Joseph Hospital, et al*, Case No. DR080194, Humboldt County, or the dismissal  
28 shall be deemed to be with prejudice. The parties further stipulate that, in defending any such action,

1 neither Datex-Ohmeda nor Abbott will assert any statute of limitations defense that did not exist as  
2 of the original date of the service of the above-entitled Complaint.

3 SO STIPULATED.

4 Dated: June 9, 2009.

ALTEMUS & WAGNER  
Stewart C. Altemus  
1255 Sacramento Street  
Redding CA 96001

7 By: /s/ Stewart C. Altemus  
Attorneys for Plaintiff, Lonnell Smith

8 Dated: June 9, 2009.

9 GLYNN & FINLEY, LLP  
Clement L. Glynn  
One Walnut Creek Center  
100 Pringle Avenue, Suite 500  
Walnut Creek, CA 94596

12 By: /s/ Clement L. Glynn  
Attorneys for Defendant  
Datex-Ohmeda (erroneously sued  
as GE Healthcare, Inc.)

14 Dated: June 9, 2009.

GORDON & REES, LLP  
Brian J. Mooney  
275 Battery Street, Suite 200  
San Francisco, CA

17 By: /s/ Brian J. Mooney  
Attorneys for Defendant  
Abbott Laboratories

19 ATTESTATION

20 I, Stewart C. Altemus, hereby attest that, pursuant to General Order 45, Section XB,  
21 concurrence in the filing of this document has been obtained from each of the other signatories  
herein.

22 Dated: June 9, 2009.

ALTEMUS & WAGNER

23 By: /s/ Stewart C. Altemus  
Attorney for Plaintiff, Lonnell Smith

25 ~~PROPOSED~~ ORDER

26 IT IS SO ORDERED.

27 Dated: 06/11/09.

28 The Honorable Phyllis J. Hamilton  
United States District Judge  
